

AMENDED IN SENATE JUNE 23, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1070

Introduced by Assembly Member Hill

February 27, 2009

An act to amend Sections 801.01, 2006, 2008, 2225.5, 2227, and 2425.3 of, and to add Section 804.5 to, the Business and Professions Code, *and to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of the Government Code*, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1070, as amended, Hill. Healing arts.

(1) Existing law provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California, physicians and surgeons by the Medical Board of California (*Medical Board*), and podiatrists by the California Board of Podiatric Medicine. Existing law requires those licensees, insurers providing professional liability insurance to those licensees, and governmental agencies that self-insure those licensees to report specified settlements, arbitration awards, or civil judgments to the licensee's board if based on the licensee's alleged negligence, error, or omission in practice or his or her rendering of unauthorized professional services.

This bill would specify that the reporting requirements apply to the University of California, as specified. *With respect to a governmental agency required to submit a report, the bill would require the agency to, prior to submitting a report, provide written notice of its intention*

to file a report to the affected licensee and provide the licensee with an opportunity to respond to the agency, as specified.

Existing law requires licensees and insurers required to make these reports to send a copy of the report to the claimant or his or her counsel and requires a claimant or his or her counsel who does not receive a copy of the report within a specified time period to make the report to the appropriate board. Existing law makes a failure of a licensee, claimant, or counsel to comply with these requirements a public offense punishable by a specified fine.

This bill would require any entity or person required to make a report to send a copy of the report to the claimant or his or her counsel. The bill would also require an entity that makes a report to notify the licensee within 15 days of the filing of the report.

The bill would also make a failure to comply with any of the reporting requirements an infraction punishable by a specified fine. By expanding the scope of a crime, the bill would impose a state-mandated local program.

Existing law requires these reports to include certain information, including a brief description of the facts of each claim, charge, or allegation, and the amount of the judgment or award and the date of its entry or service.

This bill would eliminate the requirement that this description be brief and would require the description to also include the role of each physician and surgeon or podiatrist in the care or professional services provided to the patient, as specified. The bill would also require the report to include a copy of the judgment or award.

(2) The Medical Practice Act provides for the regulation of physicians and surgeons by the Medical Board of California, and provides that the protection of the public is the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions.

This bill would prohibit any entity that provides early intervention, patient safety, or risk management programs to patients, or contracts for those programs for patients, from requiring that a patient waive his or her rights to contact or cooperate with the board, or to file a complaint with the board.

(3) Existing law authorizes the Medical Board of California to appoint panels from its members for the purposes of fulfilling specified obligations and prohibits the president of the board from serving as a member of a panel.

This bill would allow the president of the board to serve as a member of a panel if there is a vacancy in the membership of the board.

(4) Under existing law, a physician and surgeon or podiatrist who fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, is required to pay a civil penalty of \$1,000 per day, as specified.

This bill would place a limit of \$10,000 on those civil penalties and would make other related changes, including providing a definition of "certified medical records," as specified.

(5) Existing law prescribes the disciplinary action that may be taken against a physician and surgeon or podiatrist. Among other things, existing law authorizes the licensee to be publicly reprimanded.

This bill would authorize the public reprimand to include a requirement that the licensee complete educational courses approved by the board.

(6) Existing law requires the ~~board~~ *Medical Board* to request a licensed physician and surgeon to report, at the time of license renewal, any specialty board certification he or she holds, as specified. Existing law also authorizes a licensed physician and surgeon to report to the board, at the time of license renewal, information regarding his or her cultural background and foreign language proficiency.

This bill would instead require licensees to provide that information at the time of license renewal and immediately upon issuance of an initial license.

Existing law requires a licensed physician and surgeon to also report, at the time of license renewal, his or her practice status, as specified.

This bill would also require that this information be provided immediately upon issuance of an initial license.

(7) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board and various other boards. Existing law simultaneously assigns a complaint received by the Medical Board to an investigator and a deputy attorney general, as specified. Existing law makes these provisions inoperative on July 1, 2010, and repeals them on January 1, 2010, unless a later enacted statute deletes or extends those dates. Existing law also requires the Medical Board, in consultation with specified agencies, to report and

make recommendations to the Governor and the Legislature on this prosecution model by July 1, 2009.

This bill would make those provisions inoperative on July 1, 2012, and repeal them on January 1, 2013. The bill would require the Medical Board to establish and implement a plan to assist in team building between its enforcement staff and the staff of the Health Quality Enforcement Section in order to ensure a common and consistent knowledge base. The bill would also require the Medical Board to, in consultation with specified agencies, report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by March 1, 2011. The bill would make other related changes.

~~(7)~~

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 801.01 of the Business and Professions
2 Code is amended to read:

3 801.01. The Legislature finds and declares that the filing of
4 reports with the applicable state agencies required under this
5 section is essential for the protection of the public. It is the intent
6 of the Legislature that the reporting requirements set forth in this
7 section be interpreted broadly in order to expand reporting
8 obligations.

9 (a) A complete report shall be sent to the Medical Board of
10 California, the Osteopathic Medical Board of California, or the
11 California Board of Podiatric Medicine, with respect to a licensee
12 of the board as to the following:

13 (1) A settlement over thirty thousand dollars (\$30,000) or
14 arbitration award of any amount or a civil judgment of any amount,
15 whether or not vacated by a settlement after entry of the judgment,
16 that was not reversed on appeal, of a claim or action for damages
17 for death or personal injury caused by the licensee's alleged

1 negligence, error, or omission in practice, or by his or her rendering
2 of unauthorized professional services.

3 (2) A settlement over thirty thousand dollars (\$30,000), if the
4 settlement is based on the licensee's alleged negligence, error, or
5 omission in practice, or on the licensee's rendering of unauthorized
6 professional services, and a party to the settlement is a corporation,
7 medical group, partnership, or other corporate entity in which the
8 licensee has an ownership interest or that employs or contracts
9 with the licensee.

10 (b) The report shall be sent by the following:

11 (1) The insurer providing professional liability insurance to the
12 licensee.

13 (2) The licensee, or his or her counsel, if the licensee does not
14 possess professional liability insurance.

15 (3) A state or local governmental agency that self-insures the
16 licensee. For purposes of this section "state governmental agency"
17 includes, but is not limited to, the University of California.

18 (c) The entity, person, or licensee obligated to report pursuant
19 to subdivision (b) shall send the complete report if the judgment,
20 settlement agreement, or arbitration award is entered against or
21 paid by the employer of the licensee and not entered against or
22 paid by the licensee. "Employer," as used in this paragraph, means
23 a professional corporation, a group practice, a health care facility
24 or clinic licensed or exempt from licensure under the Health and
25 Safety Code, a licensed health care service plan, a medical care
26 foundation, an educational institution, a professional institution,
27 a professional school or college, a general law corporation, a public
28 entity, or a nonprofit organization that employs, retains, or contracts
29 with a licensee referred to in this section. Nothing in this paragraph
30 shall be construed to authorize the employment of, or contracting
31 with, any licensee in violation of Section 2400.

32 (d) The report shall be sent to the Medical Board of California,
33 the Osteopathic Medical Board of California, or the California
34 Board of Podiatric Medicine, as appropriate, within 30 days after
35 the written settlement agreement has been reduced to writing and
36 signed by all parties thereto, within 30 days after service of the
37 arbitration award on the parties, or within 30 days after the date
38 of entry of the civil judgment.

39 (e) The entity, person, or licensee required to report under
40 subdivision (b) shall send a copy of the report to the claimant or

1 to his or her counsel if he or she is represented by counsel. If the
2 claimant or his or her counsel has not received a copy of the report
3 within 45 days after the settlement was reduced to writing and
4 signed by all of the parties or the arbitration award was served on
5 the parties or the date of entry of the civil judgment, the claimant
6 or the claimant's counsel shall make the report to the appropriate
7 board.

8 (f) Failure to comply with this section is a public offense
9 punishable by a fine of not less than five hundred dollars (\$500)
10 and not more than five thousand dollars (\$5,000).

11 (g) (1) The Medical Board of California, the Osteopathic
12 Medical Board of California, and the California Board of Podiatric
13 Medicine may develop a prescribed form for the report.

14 (2) The report shall be deemed complete only if it includes the
15 following information:

16 (A) The name and last known business and residential addresses
17 of every plaintiff or claimant involved in the matter, whether or
18 not the person received an award under the settlement, arbitration,
19 or judgment.

20 (B) The name and last known business and residential address
21 of every licensee who was alleged to have acted improperly,
22 whether or not that person was a named defendant in the action
23 and whether or not that person was required to pay any damages
24 pursuant to the settlement, arbitration award, or judgment.

25 (C) The name, address, and principal place of business of every
26 insurer providing professional liability insurance to any person
27 described in subparagraph (B), and the insured's policy number.

28 (D) The name of the court in which the action or any part of the
29 action was filed, and the date of filing and case number of each
30 action.

31 (E) A description or summary of the facts of each claim, charge,
32 or allegation, including the date of occurrence and the licensee's
33 role in the care or professional services provided to the patient
34 with respect to those services at issue in the claim or action.

35 (F) The name and last known business address of each attorney
36 who represented a party in the settlement, arbitration, or civil
37 action, including the name of the client he or she represented.

38 (G) The amount of the judgment, the date of its entry, and a
39 copy of the judgment; the amount of the arbitration award, the date
40 of its service on the parties, and a copy of the award document; or

1 the amount of the settlement and the date it was reduced to writing
2 and signed by all parties. If an otherwise reportable settlement is
3 entered into after a reportable judgment or arbitration award is
4 issued, the report shall include both the settlement and a copy of
5 the judgment or award.

6 (H) The specialty or subspecialty of the licensee who was the
7 subject of the claim or action.

8 (I) Any other information the Medical Board of California, the
9 Osteopathic Medical Board of California, or the California Board
10 of Podiatric Medicine may, by regulation, require.

11 (3) Every professional liability insurer, self-insured
12 governmental agency, or licensee or his or her counsel that makes
13 a report under this section and has received a copy of any written
14 or electronic patient medical or hospital records prepared by the
15 treating physician and surgeon or podiatrist, or the staff of the
16 treating physician and surgeon, podiatrist, or hospital, describing
17 the medical condition, history, care, or treatment of the person
18 whose death or injury is the subject of the report, or a copy of any
19 deposition in the matter that discusses the care, treatment, or
20 medical condition of the person, shall include with the report,
21 copies of the records and depositions, subject to reasonable costs
22 to be paid by the Medical Board of California, the Osteopathic
23 Medical Board of California, or the California Board of Podiatric
24 Medicine. If confidentiality is required by court order and, as a
25 result, the reporter is unable to provide the records and depositions,
26 documentation to that effect shall accompany the original report.
27 The applicable board may, upon prior notification of the parties
28 to the action, petition the appropriate court for modification of any
29 protective order to permit disclosure to the board. A professional
30 liability insurer, self-insured governmental agency, or licensee or
31 his or her counsel shall maintain the records and depositions
32 referred to in this paragraph for at least one year from the date of
33 filing of the report required by this section.

34 (h) If the board, within 60 days of its receipt of a report filed
35 under this section, notifies a person named in the report, that person
36 shall maintain for the period of three years from the date of filing
37 of the report any records he or she has as to the matter in question
38 and shall make those records available upon request to the board
39 to which the report was sent.

1 (i) Notwithstanding any other provision of law, no insurer shall
2 enter into a settlement without the written consent of the insured,
3 except that this prohibition shall not void any settlement entered
4 into without that written consent. The requirement of written
5 consent shall only be waived by both the insured and the insurer.

6 ~~(j) Any entity that makes a report pursuant to this section shall,~~
7 ~~within 15 days after filing the report, notify the licensee that the~~
8 ~~report was filed with the appropriate licensing board.~~

9 (j) (1) *A state or local governmental agency that self-insures*
10 *licensees shall, prior to sending a report pursuant to this section,*
11 *do all of the following with respect to each licensee who will be*
12 *identified in the report:*

13 (A) *Provide written notice to the licensee that the agency intends*
14 *to submit a report in which the licensee will be identified. This*
15 *notice shall describe the specific reasons for identifying the*
16 *licensee and the specific reasons for the amount of the settlement*
17 *the agency apportioned to the licensee. The agency shall include*
18 *with this notice a copy of all records used by the agency in deciding*
19 *to identify the licensee in the report.*

20 (B) *Advise the licensee that he or she may, within 10 days of*
21 *receiving the notice described in subparagraph (A), provide a*
22 *written response to the agency and written materials in support*
23 *of the licensee's position. The agency shall include this response*
24 *and materials in the report submitted to a board under this section.*

25 (C) *Provide the licensee, after giving at least five days prior*
26 *written notice, with the opportunity to personally present his or*
27 *her arguments to the body that will make the final decision on*
28 *behalf of the agency regarding identification of the licensee in the*
29 *report.*

30 (2) *Nothing in this subdivision shall be construed to modify*
31 *either the content of a report required under this section or the*
32 *timeframe for filing that report.*

33 (k) For purposes of this section, "licensee" means a licensee of
34 the Medical Board of California, the Osteopathic Medical Board
35 of California, or the California Board of Podiatric Medicine.

36 SEC. 2. Section 804.5 is added to the Business and Professions
37 Code, to read:

38 804.5. The Legislature recognizes that various types of entities
39 are creating, implementing, and maintaining patient safety and
40 risk management programs that encourage early intervention in

1 order to address known complications and other unanticipated
2 events requiring medical care. The Legislature recognizes that
3 some entities even provide financial assistance to individual
4 patients to help them address these unforeseen health care concerns.
5 It is the intent of the Legislature, however, that such financial
6 assistance not limit a patient's interaction with, or his or her rights
7 before, the Medical Board of California.

8 Any entity that provides early intervention, patient safety, or
9 risk management programs to patients, or contracts for those
10 programs for patients, shall not include, as part of any of those
11 programs or contracts, any of the following:

12 (a) A provision that prohibits a patient or patients from
13 contacting or cooperating with the board.

14 (b) A provision that prohibits a patient or patients from filing a
15 complaint with the board.

16 (c) A provision that requires a patient or patients to withdraw
17 a complaint that has been filed with the board.

18 *SEC. 3. Section 2006 of the Business and Professions Code is*
19 *amended to read:*

20 2006. (a) ~~On and after January 1, 2006, any~~ Any reference in
21 this chapter to an investigation by the board, ~~or one of its divisions,~~
22 shall be deemed to refer to ~~an a joint investigation directed~~
23 ~~conducted~~ by employees of the Department of Justice ~~and the~~
24 ~~board under the vertical enforcement and prosecution model, as~~
25 ~~specified in Section 12529.6 of the Government Code.~~

26 (b) This section shall become inoperative on July 1, ~~2010~~ 2012,
27 and as of January 1, ~~2011~~ 2013, is repealed, unless a later enacted
28 statute, that becomes operative on or before January 1, ~~2011~~ 2013,
29 deletes or extends the dates on which it becomes inoperative and
30 is repealed.

31 ~~SEC. 3.~~

32 *SEC. 4. Section 2008 of the Business and Professions Code is*
33 *amended to read:*

34 2008. The board may appoint panels from its members for the
35 purpose of fulfilling the obligations established in subdivision (c)
36 of Section 2004. Any panel appointed under this section shall at
37 no time be comprised of less than four members and the number
38 of public members assigned to the panel shall not exceed the
39 number of licensed physician and surgeon members assigned to
40 the panel. The president of the board shall not be a member of any

1 panel unless there is a vacancy in the membership of the board.
2 Each panel shall annually elect a chair and a vice chair.

3 ~~SEC. 4.~~

4 *SEC. 5.* Section 2225.5 of the Business and Professions Code
5 is amended to read:

6 2225.5. (a) (1) A licensee who fails or refuses to comply with
7 a request for the certified medical records of a patient, that is
8 accompanied by that patient's written authorization for release of
9 records to the board, within 15 days of receiving the request and
10 authorization, shall pay to the board a civil penalty of one thousand
11 dollars (\$1,000) per day for each day that the documents have not
12 been produced after the 15th day, up to ten thousand dollars
13 (\$10,000), unless the licensee is unable to provide the documents
14 within this time period for good cause.

15 (2) A health care facility shall comply with a request for the
16 certified medical records of a patient that is accompanied by that
17 patient's written authorization for release of records to the board
18 together with a notice citing this section and describing the
19 penalties for failure to comply with this section. Failure to provide
20 the authorizing patient's certified medical records to the board
21 within 30 days of receiving the request, authorization, and notice
22 shall subject the health care facility to a civil penalty, payable to
23 the board, of up to one thousand dollars (\$1,000) per day for each
24 day that the documents have not been produced after the 30th day,
25 up to ten thousand dollars (\$10,000), unless the health care facility
26 is unable to provide the documents within this time period for good
27 cause. This paragraph shall not require health care facilities to
28 assist the board in obtaining the patient's authorization. The board
29 shall pay the reasonable costs of copying the certified medical
30 records.

31 (b) (1) A licensee who fails or refuses to comply with a court
32 order, issued in the enforcement of a subpoena, mandating the
33 release of records to the board shall pay to the board a civil penalty
34 of one thousand dollars (\$1,000) per day for each day that the
35 documents have not been produced after the date by which the
36 court order requires the documents to be produced, up to ten
37 thousand dollars (\$10,000), unless it is determined that the order
38 is unlawful or invalid. Any statute of limitations applicable to the
39 filing of an accusation by the board shall be tolled during the period

1 the licensee is out of compliance with the court order and during
2 any related appeals.

3 (2) Any licensee who fails or refuses to comply with a court
4 order, issued in the enforcement of a subpoena, mandating the
5 release of records to the board is guilty of a misdemeanor
6 punishable by a fine payable to the board not to exceed five
7 thousand dollars (\$5,000). The fine shall be added to the licensee's
8 renewal fee if it is not paid by the next succeeding renewal date.
9 Any statute of limitations applicable to the filing of an accusation
10 by the board shall be tolled during the period the licensee is out
11 of compliance with the court order and during any related appeals.

12 (3) A health care facility that fails or refuses to comply with a
13 court order, issued in the enforcement of a subpoena, mandating
14 the release of patient records to the board, that is accompanied by
15 a notice citing this section and describing the penalties for failure
16 to comply with this section, shall pay to the board a civil penalty
17 of up to one thousand dollars (\$1,000) per day for each day that
18 the documents have not been produced, up to ten thousand dollars
19 (\$10,000), after the date by which the court order requires the
20 documents to be produced, unless it is determined that the order
21 is unlawful or invalid. Any statute of limitations applicable to the
22 filing of an accusation by the board against a licensee shall be
23 tolled during the period the health care facility is out of compliance
24 with the court order and during any related appeals.

25 (4) Any health care facility that fails or refuses to comply with
26 a court order, issued in the enforcement of a subpoena, mandating
27 the release of records to the board is guilty of a misdemeanor
28 punishable by a fine payable to the board not to exceed five
29 thousand dollars (\$5,000). Any statute of limitations applicable to
30 the filing of an accusation by the board against a licensee shall be
31 tolled during the period the health care facility is out of compliance
32 with the court order and during any related appeals.

33 (c) Multiple acts by a licensee in violation of subdivision (b)
34 shall be punishable by a fine not to exceed five thousand dollars
35 (\$5,000) or by imprisonment in a county jail not exceeding six
36 months, or by both that fine and imprisonment. Multiple acts by
37 a health care facility in violation of subdivision (b) shall be
38 punishable by a fine not to exceed five thousand dollars (\$5,000)
39 and shall be reported to the State Department of Public Health and
40 shall be considered as grounds for disciplinary action with respect

1 to licensure, including suspension or revocation of the license or
2 certificate.

3 (d) A failure or refusal of a licensee to comply with a court
4 order, issued in the enforcement of a subpoena, mandating the
5 release of records to the board constitutes unprofessional conduct
6 and is grounds for suspension or revocation of his or her license.

7 (e) Imposition of the civil penalties authorized by this section
8 shall be in accordance with the Administrative Procedure Act
9 (Chapter 5 (commencing with Section 11500) of Division 3 of
10 Title 2 of the Government Code).

11 (f) For purposes of this section, “certified medical records”
12 means a copy of the patient’s medical records authenticated by the
13 licensee or health care facility, as appropriate, on a form prescribed
14 by the board.

15 (g) For purposes of this section, a “health care facility” means
16 a clinic or health facility licensed or exempt from licensure
17 pursuant to Division 2 (commencing with Section 1200) of the
18 Health and Safety Code.

19 ~~SEC. 5.~~

20 *SEC. 6.* Section 2227 of the Business and Professions Code is
21 amended to read:

22 2227. (a) A licensee whose matter has been heard by an
23 administrative law judge of the Medical Quality Hearing Panel as
24 designated in Section 11371 of the Government Code, or whose
25 default has been entered, and who is found guilty, or who has
26 entered into a stipulation for disciplinary action with the board,
27 may, in accordance with the provisions of this chapter:

28 (1) Have his or her license revoked upon order of the board.

29 (2) Have his or her right to practice suspended for a period not
30 to exceed one year upon order of the board.

31 (3) Be placed on probation and be required to pay the costs of
32 probation monitoring upon order of the board.

33 (4) Be publicly reprimanded by the board. The public reprimand
34 may include a requirement that the licensee complete relevant
35 educational courses approved by the board.

36 (5) Have any other action taken in relation to discipline as part
37 of an order of probation, as the board or an administrative law
38 judge may deem proper.

39 (b) Any matter heard pursuant to subdivision (a), except for
40 warning letters, medical review or advisory conferences,

1 professional competency examinations, continuing education
2 activities, and cost reimbursement associated therewith that are
3 agreed to with the board and successfully completed by the
4 licensee, or other matters made confidential or privileged by
5 existing law, is deemed public, and shall be made available to the
6 public by the board pursuant to Section 803.1.

7 ~~SEC. 6.~~

8 *SEC. 7.* Section 2425.3 of the Business and Professions Code
9 is amended to read:

10 2425.3. (a) A licensed physician and surgeon shall report to
11 the board, immediately upon issuance of an initial license and at
12 the time of license renewal, any specialty board certification he or
13 she holds that is issued by a member board of the American Board
14 of Medical Specialties or approved by the Medical Board of
15 California.

16 (b) A licensed physician and surgeon shall also report to the
17 board, immediately upon issuance of an initial license and at the
18 time of license renewal, his or her practice status, designated as
19 one of the following:

- 20 (1) Full-time practice in California.
21 (2) Full-time practice outside of California.
22 (3) Part-time practice in California.
23 (4) Medical administrative employment that does not include
24 direct patient care.

25 (5) Retired.
26 (6) Other practice status, as may be further defined by the board.

27 (c) (1) A licensed physician and surgeon shall report to the
28 board, immediately upon issuance of an initial license and at the
29 time of license renewal, and the board shall collect, information
30 regarding his or her cultural background and foreign language
31 proficiency.

32 (2) Information collected pursuant to this subdivision shall be
33 aggregated on an annual basis based on categories utilized by the
34 board in the collection of the data, and shall be aggregated into
35 both statewide totals and ZIP code of primary practice location
36 totals.

37 (3) Aggregated information under this subdivision shall be
38 compiled annually and reported on the board's Internet Web site
39 on or before October 1 of each year.

(d) The information collected pursuant to subdivisions (a) and (b) may also be placed on the board's Internet Web site.

SEC. 8. Section 12529 of the Government Code, as amended by Section 19 of Chapter 33 of the Statutes of 2008, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California ~~or a division of the board~~.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the ~~division or board~~.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, and the committees under the jurisdiction of the Medical Board of California ~~or a division of the board~~, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, ~~2010~~ 2012, and, as of January 1, ~~2011~~ 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2011~~ 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

1 *SEC. 9. Section 12529 of the Government Code, as amended*
2 *by Section 20 of Chapter 33 of the Statutes of 2008, is amended*
3 *to read:*

4 12529. (a) There is in the Department of Justice the Health
5 Quality Enforcement Section. The primary responsibility of the
6 section is to prosecute proceedings against licensees and applicants
7 within the jurisdiction of the Medical Board of California, the
8 California Board of Podiatric Medicine, the Board of Psychology,
9 or any committee under the jurisdiction of the Medical Board of
10 California ~~or a division of the board~~, and to provide ongoing review
11 of the investigative activities conducted in support of those
12 prosecutions, as provided in subdivision (b) of Section 12529.5.

13 (b) The Attorney General shall appoint a Senior Assistant
14 Attorney General of the Health Quality Enforcement Section. The
15 Senior Assistant Attorney General of the Health Quality
16 Enforcement Section shall be an attorney in good standing licensed
17 to practice in the State of California, experienced in prosecutorial
18 or administrative disciplinary proceedings and competent in the
19 management and supervision of attorneys performing those
20 functions.

21 (c) The Attorney General shall ensure that the Health Quality
22 Enforcement Section is staffed with a sufficient number of
23 experienced and able employees that are capable of handling the
24 most complex and varied types of disciplinary actions against the
25 licensees of the ~~division or board~~.

26 (d) Funding for the Health Quality Enforcement Section shall
27 be budgeted in consultation with the Attorney General from the
28 special funds financing the operations of the Medical Board of
29 California, the California Board of Podiatric Medicine, the Board
30 of Psychology, and the committees under the jurisdiction of the
31 Medical Board of California ~~or a division of the board~~, with the
32 intent that the expenses be proportionally shared as to services
33 rendered.

34 (e) This section shall become operative July 1, ~~2010~~ 2012.

35 *SEC. 10. Section 12529.5 of the Government Code, as amended*
36 *by Section 21 of Chapter 33 of the Statutes of 2008, is amended*
37 *to read:*

38 12529.5. (a) All complaints or relevant information concerning
39 licensees that are within the jurisdiction of the Medical Board of
40 California, the California Board of Podiatric Medicine, or the

1 Board of Psychology shall be made available to the Health Quality
2 Enforcement Section.

3 (b) The Senior Assistant Attorney General of the Health Quality
4 Enforcement Section shall assign attorneys to work on location at
5 the intake unit of the boards described in subdivision (d) of Section
6 12529 to assist in evaluating and screening complaints and to assist
7 in developing uniform standards and procedures for processing
8 complaints.

9 (c) The Senior Assistant Attorney General or his or her deputy
10 attorneys general shall assist the boards, ~~division~~, or committees
11 in designing and providing initial and in-service training programs
12 for staff of the ~~division~~, boards, or committees, including, but not
13 limited to, information collection and investigation.

14 (d) The determination to bring a disciplinary proceeding against
15 a licensee of ~~the division or~~ the boards shall be made by the
16 executive officer of the ~~division~~, boards, or committees as
17 appropriate in consultation with the senior assistant.

18 (e) This section shall become inoperative on July 1, ~~2010~~ 2012,
19 and, as of January 1, ~~2011~~ 2013, is repealed, unless a later enacted
20 statute, that becomes operative on or before January 1, ~~2011~~ 2013,
21 deletes or extends the dates on which it becomes inoperative and
22 is repealed.

23 *SEC. 11. Section 12529.5 of the Government Code, as amended*
24 *by Section 22 of Chapter 33 of the Statutes of 2008, is amended*
25 *to read:*

26 12529.5. (a) All complaints or relevant information concerning
27 licensees that are within the jurisdiction of the Medical Board of
28 California, the California Board of Podiatric Medicine, or the
29 Board of Psychology shall be made available to the Health Quality
30 Enforcement Section.

31 (b) The Senior Assistant Attorney General of the Health Quality
32 Enforcement Section shall assign attorneys to assist ~~the division~~
33 ~~and~~ the boards in intake and investigations and to direct
34 discipline-related prosecutions. Attorneys shall be assigned to
35 work closely with each major intake and investigatory unit of the
36 boards, to assist in the evaluation and screening of complaints from
37 receipt through disposition and to assist in developing uniform
38 standards and procedures for the handling of complaints and
39 investigations.

1 A deputy attorney general of the Health Quality Enforcement
2 Section shall frequently be available on location at each of the
3 working offices at the major investigation centers of the boards,
4 to provide consultation and related services and engage in case
5 review with the boards' investigative, medical advisory, and intake
6 staff. The Senior Assistant Attorney General and deputy attorneys
7 general working at his or her direction shall consult as appropriate
8 with the investigators of the boards, medical advisors, and
9 executive staff in the investigation and prosecution of disciplinary
10 cases.

11 (c) The Senior Assistant Attorney General or his or her deputy
12 attorneys general shall assist the boards, ~~division~~, or committees
13 in designing and providing initial and in-service training programs
14 for staff of the ~~division~~, boards; or committees, including, but not
15 limited to, information collection and investigation.

16 (d) The determination to bring a disciplinary proceeding against
17 a licensee of ~~the division or~~ the boards shall be made by the
18 executive officer of the ~~division~~, boards; or committees as
19 appropriate in consultation with the senior assistant.

20 (e) This section shall become operative July 1, ~~2010~~ 2012.

21 *SEC. 12. Section 12529.6 of the Government Code is amended*
22 *to read:*

23 12529.6. (a) The Legislature finds and declares that the
24 Medical Board of California, by ensuring the quality and safety
25 of medical care, performs one of the most critical functions of state
26 government. Because of the critical importance of the board's
27 public health and safety function, the complexity of cases involving
28 alleged misconduct by physicians and surgeons, and the evidentiary
29 burden in the board's disciplinary cases, the Legislature finds and
30 declares that using a vertical enforcement and prosecution model
31 for those investigations is in the best interests of the people of
32 California.

33 (b) Notwithstanding any other provision of law, as of January
34 1, 2006, each complaint that is referred to a district office of the
35 board for investigation shall be simultaneously and jointly assigned
36 to an investigator and to the deputy attorney general in the Health
37 Quality Enforcement Section responsible for prosecuting the case
38 if the investigation results in the filing of an accusation. The joint
39 assignment of the investigator and the deputy attorney general
40 shall exist for the duration of the disciplinary matter. During the

1 assignment, the investigator so assigned shall, under the direction
2 but not the supervision of the deputy attorney general, be
3 responsible for obtaining the evidence required to permit the
4 Attorney General to advise the board on legal matters such as
5 whether the board should file a formal accusation, dismiss the
6 complaint for a lack of evidence required to meet the applicable
7 burden of proof, or take other appropriate legal action.

8 (c) The Medical Board of California, the Department of
9 Consumer Affairs, and the Office of the Attorney General shall,
10 if necessary, enter into an interagency agreement to implement
11 this section.

12 (d) This section does not affect the requirements of Section
13 12529.5 as applied to the Medical Board of California where
14 complaints that have not been assigned to a field office for
15 investigation are concerned.

16 (e) It is the intent of the Legislature to enhance the vertical
17 enforcement and prosecution model as set forth in subdivision (a).
18 The Medical Board of California shall do ~~both~~ all of the following:

19 (1) Increase its computer capabilities and compatibilities with
20 the Health Quality Enforcement Section in order to share case
21 information.

22 (2) Establish and implement a plan to locate its enforcement
23 staff and the staff of the Health Quality Enforcement Section in
24 the same offices, as appropriate, in order to carry out the intent of
25 the vertical enforcement and prosecution model.

26 (3) *Establish and implement a plan to assist in team building*
27 *between its enforcement staff and the staff of the Health Quality*
28 *Enforcement Section in order to ensure a common and consistent*
29 *knowledge base.*

30 (f) This section shall become inoperative on July 1, ~~2010~~ 2012,
31 and, as of January 1, ~~2011~~ 2013, is repealed, unless a later enacted
32 statute, that is enacted before January 1, ~~2011~~ 2013, deletes or
33 extends the dates on which it becomes inoperative and is repealed.

34 *SEC. 13. Section 12529.7 of the Government Code is amended*
35 *to read:*

36 12529.7. By ~~July 1, 2009~~ *March 1, 2011*, the Medical Board
37 of California, in consultation with the Department of Justice; *and*
38 the Department of Consumer Affairs, ~~the Department of Finance,~~
39 ~~and the Department of Personnel Administration,~~ shall report and
40 make recommendations to the Governor and the Legislature on

1 the vertical enforcement and prosecution model created under
2 Section 12529.6.

3 ~~SEC. 7.~~

4 *SEC. 14.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

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